

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Public Health Service  
Indian Health Service  
Rockville, Maryland 20857

Refer to: OAM/DPM  
FPM 310

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INDIAN HEALTH SERVICE CIRCULAR 91-14

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EMPLOYMENT OF RELATIVES

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1. PURPOSE

This circular establishes the policy of the Indian Health Service (IHS) on the employment of relatives. It also provides procedures for balancing the requirements of anti-nepotism statutes and regulations with those of Section 12 of the Indian Reorganization Act of 1934, Title 25 United States Code (U.S.C.) 472, concerning preference in employment to Indian candidates.

2. COVERAGE

The provisions of this circular apply to all civil service employees, both in the competitive and the excepted service, and to Commissioned Corps personnel when filling positions in the IHS.

3. DEFINITIONS

For the purpose of this circular:

- A. "Relative" is father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

- B. "Public Official or IHS official" is an officer, a member of the Public Health service Commissioned corps, an employee, and any other person, in whom is vested the authority by law, rule, regulation, or delegation to appoint, employ; 'promote, or advance individuals or to recommend individuals for any such actions.
- J c. "Advocate" Is to recommend either orally or in writing or refer one's relative to an official in the Department of Health and Human services for appointment, employment, promotion or advancement.
- D. Chain of Command" is the line of supervisory authority that runs from the head of an agency to the immediate supervisor.
- E. Agency is Department of Health and Human Services.
- F. Organizational unit is that part of an organization that is under the chain of command of the IHS official who is appointing, employing, promoting or advancing the individual. For example, the organizational unit for an Area Director is the entire Area; for an Office Director, the Office; for a Division Director, the Division, etc.
- G. Civilian position is a position filled by a Civil Service employee.

4. AUTHORITY

The authorities on which the provisions of this circular are based are:

- A. Statutory -- 5 U.S.C. 3110, which applies to all employees in the civil service and the Commissioned Corps; and 5 U.S.C. 2302, which applies to all employees in the civil service.
- B. Executive Order - E.O. 10577 and 12674, which apply to all employees in the civil service.
- C. Regulatory -- 5 Code of Federal Regulations (CFR) 310, Subpart A, which applies to all employees in the civil service.

5. BACKGROUND

Nepotism, as used in this circular, is favoritism shown to a relative by an IHS official as defined in 5 U.S.C. 3110, which provides that "a public official may not appoint, employ, promote, advance or advocate for employment, promotion or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction

or control, any individual who is a relative of the public official." By this policy, the IHS has extended 5 U.S.C. 3110 to include the filling of positions with Commissioned corps Officers as well as civil service employees. 5 U.S.C. 2302 (B)(7) makes it a prohibited personnel practice to take or advocate any such action. This restriction shall not be construed to prohibit the appointment of a veterans preference eligible when the passing over of that individual on a certificate from U.S. OPM or from the Excepted Service Examining-Plan will result in the selection for appointment of an individual who is not a preference eligible.

Juxtaposed to these anti-nepotism statutes and regulations is the Indian Reorganization Act of 1934, which is codified in 25 U.S.C. 472 and implemented, with regard to staffing, in IHS Circular No. 8702 the IHS Merit Promotion Plan, and the IHS Merit Examining Plan. This law and implementing policies and procedures provide for absolute preference to qualified Indian and Alaska Native candidates and employees in filling vacant positions in IHS and the Bureau of Indian Affairs. Thus an issue arises as to the co-existence of these ostensibly conflicting statutory and regulatory requirements.

Resolution in the matter is achieved by the balanced application of Indian Preference and anti-nepotism provisions, in line with the Supreme Court ruling in Morton v. Mancari. Principles of statutory construction require that we interpret laws or regulations which appear to be conflicting or inconsistent in a manner which permits carrying out the intent of both. This requirement is captured in the nepotism policy that follows and in the procedures provided for its implementation.

## 6. POLICY

An IHS official must not appoint, employ, promote or advance a relative to an IHS position unless not taking the action violates a statutory requirement of Indian preference or Veterans preference. Additionally, an IHS official must not advocate any such action by recommending or referring a relative to any official in the Department of Health and Human Services. An IHS official must not grant nor advocate a career promotion for a relative if the promotion is discretionary (not based on a statutory requirement:)

The force and intent of this policy is to permit IHS officials to appoint or select a relative when (1) a vacancy is being filled, (2) the relative is entitled to Indian Preference, and (3) there is no other qualified Indian Preference candidate available for the position. Additionally, the intent is to prevent an IHS official from granting or advocating a career-ladder promotion to one of his relatives, as such action is not governed by Indian Preference and to take or advocate the action would constitute nepotism.

(Please note: A within grade increase is not a promotion or advancement per FPM 31001-2d.)

## 7. PROCEDURES

- A. The employment of members of the same family in-the same organizational, unit leads to potentially compromising situations for IHS Officials. Because -these situations create the opportunity for impropriety or conflict of interest,. or at least the appearance of such, responsible officials mustensure that employees involved in recruitment utilize all reasonable means to obtaincandidates for IHS positions who **are** not relatives of employees already in the organization.
- B. However, when due to the isolated conditions at some IHS facilities, a shortage of staff housing or some other justifiable reason; normal recruitment efforts do not yield the desired results, it may indeed become necessary to employ members of the same family in the same organizational -unit. In such instances, all recruitment efforts must be documented, and the documentation must be made a part of the personnel action package.
- C. When an IHS official appoints one of his relatives to or selects him for an **IHS** position, the action must be reviewed and approved by the Area Director, or the Deputy Director, IHS if the person is a relative of the Area Director, In Headquarters, approval authority rests with the appropriate Associate Director, or the Director of Headquarters Operations if the person is a relative of the Associate Director.
- O. When the only qualified Indian preference candidate on a selection certificate is the relative of the selection official, the position must be reannounced and further recruitment efforts made to-obtain additional qualified Indian/Alaska Native candidates unless an open continuous announcement was used to fill the position and/or management can document previous unsuccessful efforts to fill the same type of vacancy. If the reannouncement and further recruitment efforts fail to yield the desired results and management chooses to make a selection, the relative must be selected (because of Indian **preference**). **As** stated in 7.B above, the selection package must be documented to show the recruitment efforts made and the selection approved in accordance with 7.C.
- E. When the only qualified candidate on a selection certificate is a non-Indian/Alaska Native and that **person** is a relative of the selecting official, the relative must be selected.
- F. When **a** selection certificate contains two or more candidates, all of whom are Indian/Alaska Native, and one is a relative of the selecting official, the relative must not be selected (because there is at least one other qualified Indian Preference candidate who **can** be selected). one of the non-relatives may be selected.

- G. In all cases involving the employment of relatives within the same organizational unit, responsible officials must ensure that lines of supervision are structured so as to prevent, wherever possible, situations in which an IHS official supervises his own relative. If necessary and practical, appropriate reassignments should be made.
- H. An IHS official supervising a relative who is due a career-ladder promotion must disqualify himself from granting or advocating the promotion. Any discretionary promotion action would need to be initiated and taken by the next appropriate higher-level official in the chain of command.

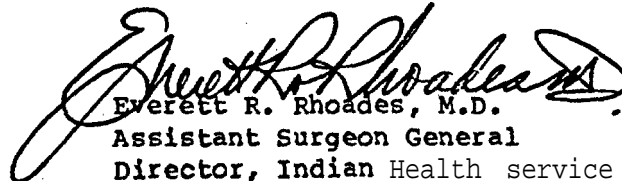
8. PENALTIES

5 U.S.C. 3110 (c) provides that an individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay. Payments made in violation of this section are subject to recovery. 5 U.S.C. 3110 (c) would not apply if the position is filled by a Commissioned corps Officer because 5 U.S.C. 3110 only applies to filling a position-with a civilian.

An IHS official who violates this policy and/or the statutes upon which this policy is based is subject to disciplinary action.

9. SUPERSESSON

This circular supersedes Indian Health Personnel Instruction 300-1, Section 300-1-10 C, as amended, dated March 29, 1976.

  
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